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VIRTUAL MOOTING: USING TECHNOLOGY TO ENHANCE THE MOOTING EXPERIENCE

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I. INTRODUCTION

There are a range of benefits to students who participate in mooting which have been identified by the literature in relation to legal education. In addition to developing practical skills such as advocacy, research and writing, and analytical ability,¹ mooting provides other benefits which further enhance students' employability. These benefits include improved self-confidence,² the development of professional networks and enhancing resumes.³ Online learning can improve the learning environment for on-campus and distance students by providing flexibility without the constraints of time and space. Online learning fosters the ability to learn by oneself and to understand and adapt to change.⁴

The authors have recently conducted surveys of past and present mooters and law students generally, which have revealed some impediments to students participating in the mooting program. These impediments include that students who have not mooted do not always have the confidence to volunteer for mooting, students may be discouraged by the time commitment, and some students may not be able to attend campus to participate in moots. This paper will explore the use of technology to enhance the experience of all students participating in mooting. The paper will evaluate technological options such as the use of Second Life, Elluminate and videoconferencing and will recommend a trial of these options to facilitate virtual mooting.

II. EXPLORING MOOTING AND TECHNOLOGY

A. Benefits of Mooting

Almost all of the literature agrees on the benefits to students resulting from participation in mooting programs. David Pope and Dan Hill state that mooting 'makes you think like a lawyer, improves your public speaking skills, is the best way to learn the law, gives you confidence, will help you find a job and is fun'.⁵ John Snape and Gary Watt state that mooting teaches the ability to explain what may be very complex legal material simply and clearly,⁶ the ability to deal with interruptions and challenges, teamwork and the ability to 'disguise' the most detailed examination of the most technical of material in the most persuasive way.⁷ It also teaches that the skills of research and presentation are 'absolutely interdependent' and there is also 'the simple fun of taking part'.⁸ Terry Gygar and Anthony Cassimatis state the benefits of mooting

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1 John Snape and Gary Watt, *How To Moot: A Student Guide To Mooting* (2005); Terry Gygar and Anthony Cassimatis, *Mooting Manual* (1997).

2 David Pope and Dan Hill, *Mooting and Advocacy Skills* (2007).

3 Michael Hernandez, 'In Defense of Moot Court: A Response to "In Praise of Moot Court - Not!"' (1998) 17 *Review of Litigation* 69.

4 Bernadette Richards, 'Alice Comes to Law School: The Internet as a Teaching Tool' (2003) 14(1) *Legal Education Review* 115.

5 Pope and Hill, above n 2, 4–5.

6 Snape and Watt, above n 1, 14–17.

7 Ibid.

8 Ibid 17.

as teaching the techniques of problem analysis, research, logical thinking, presentation of argument and verbal skills.⁹ Regarding gender and equity issues:

It appears from the university experience that many disadvantaged students who were initially withdrawn and reticent about expressing their views in class situations gain enormously in confidence as a result of moots where they are able to demonstrate they can hold their own in any company.¹⁰

Mooting has been used to promote active learning in disciplines other than law. Lon Carlson and Neil Skaggs discuss the broader use of mooting as an active learning technique to make economics interesting to a broader section of the student population than could be expected with reliance on traditional methods.¹¹ Charles Knerr and Andrew Sommerman identify the benefits as developing legal research skills, applying principles to factual situations, formulating written delivery, developing persuasion skills, learning how to run a case and developing coordination skills.¹² Andrew Lynch argues the benefits as improving communication skills, written expression, teamwork, research and confidence.¹³

There is one exception in the literature about the benefits of mooting. Alex Kozinski argues that mooting does not develop the right skills because moots are won by advocacy skills rather than the merits of the case and as a result provide no benefit to resumes.¹⁴ However Michael Hernandez states the advantages of moot court in reply to Kozinski's criticisms, as developing writing and advocacy skills, character building and resume building.¹⁵ Hernandez suggests improvements to mooting such as placing more emphasis on written submissions and improving the judging. He concludes that 'we need more moot court not less'.¹⁶ This is supported by Joel Butler and Rachel Mansted who highlight the need to practise skills for mooting.¹⁷

The benefits of mooting over learning law in classroom settings were succinctly stated by John Gaubatz:

Too often overlooked is the academic benefit to be derived from a good moot court experience. The sort of analysis and synthesis implicit in arguing any appeal is the meat of legal education in the normal classroom. In the latter ... the pressure to 'move on' can even limit the benefit to the recite. But in the moot court the student has several weeks to dig into an analytic problem.¹⁸

The benefits of mooting identified by the literature can be summarised as follows:

- Academic learning is improved because students are actively engaged with the law and have time to analyse the problem and relevant law in depth;
- Mooting teaches students to 'think like a lawyer', i.e. to analyse problems logically, applying the facts of a problem to the law and presenting complex legal arguments simply and concisely.

9 Gygar and Cassimatis, above n 1, 156.

10 Ibid.

11 J Lon Carlson and Neil T Skaggs, 'Learning by Trial and Error: A Case for Moot Courts' (2000) *Journal of Economic Education* 145, 153.

12 Charles Knerr and Andrew Sommerman, 'Undergraduate Moot Court in American Colleges and Universities' (Paper presented at the Annual General Meeting of the National Communications Association, Seattle, WA, 8-12 November 2000) <http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/d4/64.pdf> at 14 October 2009.

13 Andrew Lynch, 'Packing Them in the Aisles: Making Use of Moots as Part of Course Delivery' (1999) 10 *Legal Education Review* 83, 86-7.

14 Alex Kozinski, 'In Praise of Moot Court - Not!' (1997) 97 *Columbia Law Review* 178.

15 Hernandez, above n 3.

16 Ibid 89.

17 Joel Butler and Rachel Mansted, 'The Student as Apprentice: Bridging the Gap between Education, Skills and Practice' (2008) 1 *Journal of the Australasian Law Teachers Association* 287, 294.

18 John Gaubatz, 'Moot Court in the Modern Law School' (1981) 31 *Journal of Legal Education* 87, 89.

- Mooting assists students to develop skills in written and oral communication, legal research and advocacy, to gain self-confidence and to build character.
- Mooting assists students to understand courtroom processes and how to run a case.
- Involvement in mooting can assist students to obtain a job by networking and resume building.

B. Benefits of Providing Online Mooting and Resources

It is apparent from the literature reviewed in the previous section that there are many benefits to students resulting from participation in mooting while at law school. This section will review the literature in order to assess how technology can enhance a law school's mooting program. The use of technology may be of particular benefit to off-campus students who otherwise may not have access to mooting resources or be able to participate in mooting which traditionally occurs face to face; however all students may benefit from the use of technology in the mooting program.

The primary benefit of online learning is that it enables students to interact without the constraints of time or geographical location.¹⁹ According to Dan Hunter, the internet will mean that teaching in law will become web-based and 'students will not be required to be physically present at the law school for the extended periods which we currently expect.'²⁰ Where law schools cater to off-campus students, they must adopt online teaching strategies to meet the needs of those students.²¹ According to Hunter, the use of web-based teaching technologies by law schools who offer distance education is a 'no-brainer':

It is perfectly obvious that these systems can provide what distance-education providers have always promised: seamless delivery of material, teaching, communication and interaction.²²

Not only does online learning provide flexibility (which benefits both on- and off-campus students), it can also lead to an improved learning environment for students. It has been argued that requiring students to use technology assists them in becoming more flexible and enhances their ability to understand and adapt to change,²³ which has been said to be one of the most important outcomes of legal education.²⁴ Online learning fosters the ability to learn by oneself and to understand and adapt to change.²⁵

Online technology has also been demonstrated to be an effective means of providing skills training in an environment which can mimic real life and be engaging for students.²⁶ Des Butler argues:

Skills training poses its own challenges when considered in the context of units teaching large number of students who are studying in a variety of modes. Today, many or most of those students are so-called 'millennial students' who, in addition to juggling work, study and social commitments, have grown up in a digital age of merged technologies. Technology offers the means of addressing these challenges, providing flexibility, interactivity and engagement for students. It also can afford the same learning experience irrespective of the mode of study.²⁷

19 Richards, above n 4, 116.

20 Dan Hunter 'Legal Teaching and Learning over the Web' (2000) 2 *University of Technology Sydney Law Review* 124.

21 Ibid.

22 Ibid.

23 Richards, above n 4, 117.

24 John Goldring, 'Coping with the Virtual Campus: Some Hints and Opportunities for Legal Education?' (1995) 6 *Legal Education Review* 91, 96.

25 Richards, above n 4, 116.

26 Des Butler, 'Air Gondwana: Teaching Basic Negotiation Skills Using Multimedia' (2008) *Journal of the Australasian Law Teachers Association* 14.

27 Ibid 226.

Elfriede Sangkuhl argues that despite the benefits of online learning, one major drawback is that it does not teach students the important skill of listening which they would normally gain in a classroom environment.²⁸ While Sangkuhl's point is well made, drawing on the comments made by Eugene Clark and others referred to below, the skill of communicating in an online environment is one which is equally important in modern practice.

In addition to the pedagogical advantages of online technologies, law schools have an obligation to use technologies because lawyers in modern legal practices need to possess technological communication skills.²⁹ Gene Koo recommends that '[l]aw schools should leverage technology more effectively to accomplish the goal of skills transmission',³⁰ and that they should '[u]tilize technology to create more effective simulations'.³¹ Clark said in 2001:

Legal educators must be prepared and able to educate tomorrow's lawyers who will work in law offices which will operate in a dramatically different environment than that which exists in the majority of today's organisations.³²

Richards notes that law students who are not exposed to the internet 'and all that it entails' will be disadvantaged when they enter legal practice.³³ This disadvantage may extend to the lawyer's ability to interact with courts which are increasingly adopting various technologies for communication and document management.

C. Technology in the Courts

Courts have changed dramatically over the last 20 years in their use of communication and document management technologies. In the Federal Court of Australia, for example, eFiling allows litigants or practitioners to lodge applications and other documents electronically (including the ability to pay filing fees by credit card), case management may be facilitated by the use of eCase Administration, pretrial matters such as directions hearings can be heard in a 'virtual courtroom' (eCourtroom), and the current state of proceedings can be monitored electronically via the secure Commonwealth Courts Portal.³⁴

Similar technological developments have taken place or are planned in the various State courts. The Chief Justice of Queensland, Paul de Jersey, has referred to the goal, and advances already made, in the Queensland court system of reducing the disparity between the technological support available to practitioners in their own offices and the generally inferior resources which are available once in the court itself.³⁵ Frederika De Wilde argued (in 2006) that litigation in Australia had been 'transformed by the increasing use of courtroom technology', and detailed examples of the advancing technology across Australian jurisdictions.³⁶ Such changes are directed to both the 'humanitarian' and the 'administrative' face of the justice system.³⁷

The availability of such technology within the court system facilitates more equitable access (including by unrepresented litigants), as well as lessening the opportunity for wealthier litigants

28 Elfriede Sangkuhl, 'E-Learning – Are "Old" Communication and Listening Skills Being Devalued in Pursuit of E-Learning?' (2008) 1 *Journal of the Australasian Law Teachers Association* 8.

29 Gene Koo, *New Skills, New Learning: Legal Education and the Promise of Technology* (2007) Berkman Center for Internet & Society, Harvard University <http://cyber.law.harvard.edu/publications/2007/New_Skills_New_Learning> at 14 October 2009.

30 Ibid 18.

31 Ibid 20.

32 Maggie Macrae, 'Academic Leader Calls for Action' (2001) 8 *e.Law Practice* 21, 22.

33 Richards, above n 4, 116.

34 See *eCourt*, Federal Court of Australia <http://www.fedcourt.gov.au/ecourt/ecourt_slide.html> at 12 June 2009.

35 Chief Justice Paul de Jersey, 'In Our Courts, the Future Is Now' (2008) April *Proctor* 19, 19.

36 Frederika De Wilde, 'Courtroom Technology in Australian Courts: An Exploration into Its Availability, Use and Acceptance' (2006) 26 *Queensland Lawyer* 303, 303.

37 John Hatzistergos, 'The Virtues of Audiovisual Links in the Courtroom' (2008) 46 *Law Society Journal* 57, 57.

to exhaust the resources of their opponents – an outcome which is consistent with the ‘equality principle’ identified in the Woolf Report³⁸ and the observation by Lord Woolf that ‘sensible investment in appropriate technology is fundamental to the future of our civil justice system’.³⁹

Lord Woolf also alluded to the possibility of ‘more powerful videoconferencing facilities’ in the then foreseeable future.⁴⁰ That future has, in 2009, arrived. Videoconferencing facilities are now in widespread use in Australian courts in procedural and substantive settings ranging from preliminary proceedings through to appeals. Since the hearing of the ‘first civil case to be heard electronically’ – *Estate Mortgage* in NSW in 1997⁴¹ – appropriate practice directions have been issued and procedural rules amended to accommodate videoconferenced proceedings in a number of jurisdictions.⁴² Sheryl Jackson refers to the first ‘electronic trial’ heard in Queensland, *Covecorp Constructions Pty Ltd v Indigo Projects Pty Ltd*,⁴³ and summarises the protocols agreed by the parties prior to trial, including methods of scanning and numbering of PDF files, methods of dealing with partially privileged documents, and tracking systems in Excel which allowed for the interrogation of the document database.⁴⁴ Electronic document management within the court system also allows for the more efficient (and therefore less costly) handling of complex trials, and the transfer, to some extent, of the management of the progress of trials from the parties to the Court – a development also consistent with the reforms suggested by Lord Woolf, as enunciated by Einstein J in *Idoport Pty Ltd v National Australia Bank Limited* (‘*Idoport*’).⁴⁵ Indeed, the conduct of the hearing of *Idoport* – which involved the availability of in excess of 120,000 pages of documents – might well have been impossible before the development of electronic document storage and retrieval systems.⁴⁶

D. The Use of Technology in Mooting by Australian Law Schools

The increasing availability of courtroom technology has led to the establishment of electronic moot courts in law schools. An audit of information provided on Australian law school websites reveals that all 32 Australian law schools participate in mooting and at least nine have electronic moot courts that include facilities such as videoconferencing, networking, digital recording, integrated audiovisual facilities, electronic document management systems, plasma screens, DVD players, document cameras and interactive electronic ‘smart’ whiteboards. Table 1 below lists the nine law schools that have electronic mooting facilities promoted on their websites and provides links to sources of information about those facilities. While it is not clear the extent

38 Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (July 1999) ch 4, [10] <<http://www.dca.gov.uk/civil/final/index.htm>> at 12 June 2009.

39 Ibid ch 21, [1].

40 Ibid ch 21, [22].

41 See Sandra Potter, ‘Tech Support – Effective Use of IT in Civil Litigation’, *Lawyers Weekly*, 9 May 2003, 14.

42 See De Wilde, above n 36, 315ff; Hatzistergos, above n 37. See, eg, the *Evidence (Audio and Audio Visual Links) Amendment Act 2007* (NSW).

43 Sheryl Jackson, ‘Court-provided Trial Presentation Technology- The Way of the Future?’ (2008) July *Proctor* 58, 58.

44 Ibid 58, 60.

45 [2000] NSWSC 338, [25].

46 That is not to say that document imaging is a perfect solution, given the limitations associated with reading documents on screen: see Richard E Susskind, *The Future of Law: Facing the Challenges of Information Technology* (1996) 67–8. Moreover, reliance on IT document storage, retrieval and presentation carries the risk of a lack of judgement being exercised by practitioners as to what documents are *really* significant, as suggested by Kirby J when complaining that what was being lost was the skill of the advocate in ‘discernment: the decision to cut away irrelevant or insignificant materials to help the decision-maker to come to the desired outcome’: Justice Michael Kirby, ‘Appellate Advocacy: New Challenges’ (Speech delivered at the Dame Ann Ebsworth Memorial Lecture, London, 21 February 2006).

to which the various electronic moot courts are currently able to interact with each other in a way that mimics real courtroom technology, it can be said that Australian law schools are in a position to move towards a more integrated use of technology to facilitate mootting in a virtual environment.

Bond University	Electronic moot court ‘equipped with evidence management systems, video conferencing facilities and video streaming that replicates the very latest technology used in the High Court of Australia.’	http://www.bond.edu.au/life-at-bond/facilities-services/teaching-facilities/legal-skills-centre/moot-courts/index.htm
Griffith University	Electronic moot court ‘features the latest courtroom technology, including computers, screens on the bar table and judge’s bench, a document visualiser and video-recording equipment.’	http://www.lawyersweekly.com.au/blogs/top_stories/archive/2005/07/22/new-moot-court-open-for-debate.aspx
Murdoch University	Electronic moot court opened in 2004.	http://www.law.murdoch.edu.au/mcb
Queensland University of Technology (QUT)	Electronic courtroom opened in 2001 ‘containing state-of-the-art information technology and audio-visual integration. New technology in the courtroom revolutionises document management and provide[sic] new methods of displaying evidence and exhibits.’	http://law.qut.edu.au/about/moots/mootcourt.jsp?view=print
University of Adelaide	Moot court has video recording facilities.	http://www.law.adelaide.edu.au/events/moot_court_opening.html
University of Canberra	eCourt: “‘State of the Art’ electronic facilities which include plasma screens, a “smart” whiteboard and a “Hansard” style digital audio and visual recording system.’	http://www.canberra.edu.au/faculties/law/overview/ecourt
University of Melbourne	Electronic facilities in moot court include digital recording, networking, videoconferencing, integrated audiovisual facilities, plasma screens, DVD players, document cameras and an interactive electronic ‘smart’ whiteboard.	http://www.law.unimelb.edu.au/go/about-us/facilities-and-technology/moot-court/index.cfm
University of New England	Electronic moot court opened in 2005	http://www.une.edu.au/law/news/default/2005/09/249.php
University of New South Wales	eCourt opened 2009. ‘Features video conferencing, audio visual, document management and transcription technologies’ and will also feature international connectivity.	http://www.law.unsw.edu.au/news_and_events/news.asp?type=&name=2261&year=2009

Table 1: Australian universities that have electronic mootting facilities

The readiness of Australian law schools to adopt online technology to facilitate mooting is demonstrated by the success of the International Virtual Moot (IVM). The IVM, which is organised by Murdoch University, has been conducted since 2006. The IVM aims to conduct mooting 'in a truly virtual realm'.⁴⁷ The IVM enables participation by teams from universities in Australia and internationally, by using internet protocol videoconferencing and electronic document sharing facilities. In 2008, seven universities from Australia and the United States participated in the IVM.

E. Conclusion about Mooting and Technology

From the literature reviewed in this section in relation to the use of technology in legal education it can be seen that law schools should use technology in order to ensure that their graduates have the necessary technological skills for legal practice and to ensure effective learning environments are created for all mooting students. Technology is an effective and flexible means of providing legal skills training. This leads to the conclusion that online technology should be used in mooting to assist students to develop their mooting skills and to facilitate moots to assist students to gain the technological communication skills they will need in practice. An additional benefit is that students will be able to participate in mooting regardless of their ability to attend on campus.

III. SURVEY RESULTS

During semester one in 2009, the authors conducted two surveys, one of all current QUT law students and the other of past and present QUT mooting students. The survey of all the students was delivered electronically via a community Blackboard site that is accessible by all law students. The survey of mooters was sent by email and returned anonymously to a box which was accessed only by a research assistant. The surveys comprised a mixture of closed and open-ended questions that were designed to gauge what students perceive to be the benefits of mooting, any impediments to students participating in mooting at QUT and any improvements that could be made to the QUT mooting program. Twenty-one students responded to the survey of past and present mooters (out of approximately 40 students who have participated in mooting at QUT in the last two years) and 95 students responded to the survey of all students (out of approximately 1100 students currently enrolled in undergraduate law at QUT). The survey results were collated according to the thematic responses to the open-ended questions. Where appropriate, statistics were generated from the themes that emerged. The responses to the closed questions are summarised in Tables 2 and 3 below.

47 *International Virtual Moot Competition*, Murdoch University <<http://www.law.murdoch.edu.au/vm/index.html>> at 12 June 2009.

Question	Yes	No	Unsure
Do you think mooting provides any benefits to students?	21	0	0
Did mooting help you gain employment?	15	3	2
Did mooting help you make contacts in the legal profession?	18	3	0
Did mooting help you in your law subjects?	21	0	0
Do you think that the use of technology would have improved your experience? If so, how, and what technology?	3	14	3
Did mooting help you connect with other law students?	20	1	0

Table 2: Survey of past and current mooters

Question	Yes	No	Unsure
Do you consider there are any benefits from participating in the mooting program?	73	22	0
Do you think mooting would help you get a job?	55	10	7
Do you think Mooting will help you make contacts in the legal profession?	45	4	17
If you could moot without having to travel, would that make you moot?	47	13	11

Table 3: Survey of all students*A. Benefits*

The results of the survey questions summarised above show that students do believe there are benefits in participating in mooting and, further, that students who have participated in mooting are more aware of those benefits. Students who had participated in mooting were asked what attracted them to the mooting program. The key reasons identified by students for becoming involved in mooting were:

- To improve advocacy skills (13 students);
- To improve their CV/resume in order to appear attractive to prospective employers (4 students);
- Networking with students and members of the legal profession (3 students);
- To engage in public speaking (3 students);
- The challenge of trying something new (3 students); and
- To work in a team (2 students).

One student also identified the importance of mooting in gaining real-world experience:

It is really one of the only times at university that we actually put the skills we are learning into real practice – research, clarification, gathering of information (esp in something like IML) and then presenting our case. This, while working in a team, is much more practical than the theoretical focus of normal university life.

In response to the question ‘Do you think mooting provides any benefits to students?’ mooting students identified the following benefits:

- Improved advocacy skills (11 students);
- Other skills such as research (8 students), teamwork (5 students), communication (3 students), analytical skills (3 students), and time management (2 students);
- Developing friendships and networking (7 students);

- Knowledge of court procedure and etiquette (5 students);
- Improved self-confidence (4 students);
- Opportunity to travel (2 students); and
- Improved employment prospects (2 students).

Comments by past and current mooters are typified by the following:

It provides great benefit – teaches commitment, responsibility, the ability to work in a team, oral and written communication skills, ability to work to a time frame. It assists such a wide array of skills that has become, to me, an invaluable experience. The attention to detail that was required while mooting has transferred across to my university work, which is a huge benefit.

In response to the question ‘Did mooting help you in your law subjects?’, mooting students stated that mooting assisted their research (7 students), writing skills (2 students), oral presentation skills (4 students), tutorial participation (2 students), and with putting theoretical knowledge into context (2 students).

Yes – taught me that I can challenge a court decision if I don’t believe it to be correct; that some law is bad law and judges genuinely make mistakes. So when studying a case if the outcome appears illogical and the reasons given bizarre it’s because they probably are, it’s not just a failure to understand on my part. It also helped me to put what I had learnt previously in context.

The results of the survey support the benefits of mooting identified by the literature discussed above and also raise an additional motivation for students as being the opportunity for travel. Additional academic benefits identified by students in the survey were improved learning techniques applied in other university studies and the contextualisation of their other law studies.

B. Technology

Mooting students were asked ‘Do you think that the use of technology would have improved your experience? If so, how, and what technology?’ As seen in Table 2 above, the majority of students did not believe that their mooting experience could have been improved by the use of technology. One student did note that technology could be used where teams are in different locations. Another student suggested that a video of one’s own performance would be useful. One student suggested making better use of the facilities in QUT’s e-Moot Court. However, another student noted that while virtual competitions are a great idea, they have the drawback that students would not have the opportunity to socialise with other students.

The survey of all students also asked about their confidence with the use of technology. Twenty-eight students indicated they were very confident, 32 fairly confident and only eight students said they were not confident with the use of technology. This means that at least 60 per cent of the students surveyed are confident with the use of technology.

The survey responses indicate that students who have been involved in mooting do not perceive a need for technology to enhance their experience, however they do acknowledge that technology may enable students to participate from a distance even though the experience may not be equivalent to that of a moot conducted face to face. There was also a suggestion that existing resources could be better used to expose students to courtroom technologies. Students who had participated in the IVM reported that this was an interesting experience. Given the findings of the recent Australian Learning and Teaching Council (ALTC)-commissioned report into the use of web-based technologies in teaching and learning – that 80 per cent of students believe that the use of web-based learning technologies make it easier to learn – these findings require further investigation.⁴⁸ The authors intend to conduct student focus groups in the next phase of the project to explore students’ views regarding the use of technology in

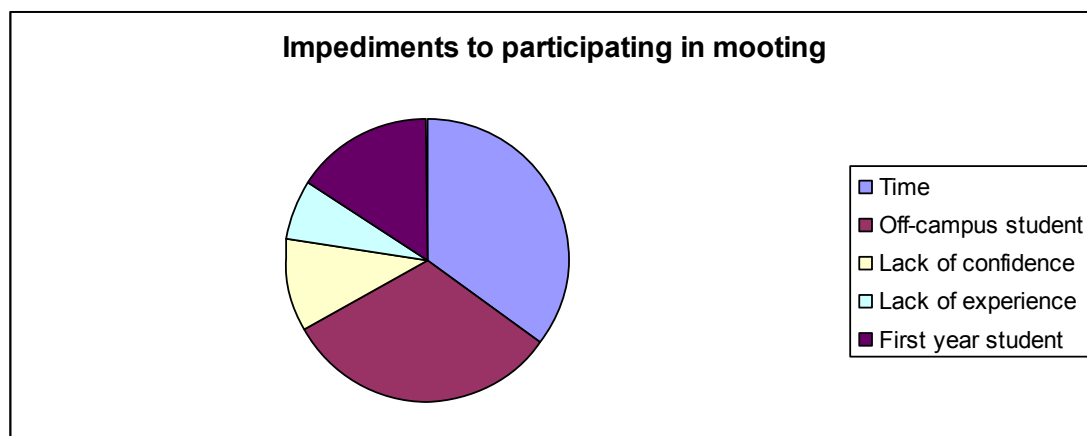
48 Maree Gosper, et al, *The Impact of Web-based Lecture Technologies on Current and Future Practices in Learning and Teaching* (2008) Australian Learning and Teaching Council, 20 <<http://www.altc.edu.au/resource-impact-webbased-lecture-technologies-macquarie-2008>> at 14 September 2009.

mooting in more depth. One possibility is that mooting is one situation in which ‘learning experiences and outcomes are best achieved through a physical presence for example where social communication, networking, socialisation and collaboration are key outcomes’.⁴⁹ It may be that the technology provides the opportunity to practise, with the ultimate aim of competing in face-to-face external mooting competitions remaining.

C. Impediments

The survey of all students sought to elicit any impediments to students participating in mooting. Students were asked, ‘If you are interested but have not participated in the mooting program, why not?’ The impediments identified by students who had not participated in mooting were time (20 students), being an off-campus student (18 students), being a first-year student (9 students), lack of confidence (6 students) and lack of experience (4 students).

Figure 1



In response to the question ‘If you could moot without having to travel, would that make you moot?’ one student commented:

I definitely would like the experience of participating in mock court trials and practising presenting argument, I believe it is an essential part of learning Law, and a very useful part of the learning tools supplied by QUT. In other words, I am very keen.

The results of the survey suggest that while lack of time is the overwhelming impediment to mooting, distance is also a significant factor. It is suggested that the following strategies to overcome these impediments be investigated:

- While external mooting competitions require a substantial time commitment, internal moots based on content areas students have already studied are less so. It is suggested that technology be used to facilitate internal moot competitions in order to make more internal, less time-consuming, mooting opportunities available.
- The use of technology should be trialled to facilitate mooting for students who are not otherwise able to participate because of their geographical location. While the virtual mooting experience may not fully replicate the experience of students who moot face to face, many of the benefits of mooting can be gained through virtual mooting.

⁴⁹ Ibid 48.

IV. RECOMMENDATION: A COMPARATIVE ASSESSMENT OF VIRTUAL MOOTING PLATFORMS

It is the responsibility of universities preparing law students for the world of practice to provide them with an education which, as nearly as possible, matches the characteristics of the world in which they will practise. That is no less true in the world of the electronic courtroom than it was before information technology changed the face of court practices: when students needed to be introduced to and become familiar with paper-based cases, citators and digests. There are a number of technological solutions to the problem of making mooting – and the advantages which flow from it – available to off-campus students.

A. Second Life

The use of Second Life to provide a virtual learning environment for law students has been pioneered by Harvard Law School, firstly in the unit *CyberOne: Law in the Court of Public Opinion*,⁵⁰ followed by *Evidence 2000*, a course which ended with ‘two moot trials, based on real judicial cases, which ... took place in the virtual moot court, with students acting as advocates and judges, and SL residents as jurors or witnesses.’⁵¹ Subsequently, Harvard offered a seminar-based unit, *Trials in Second Life*, promising a ‘workable, educationally useful, entertaining, and perhaps practical dispute resolution format in a new and exceedingly interesting medium’.⁵²

Virtual mooting conducted in Second Life is undoubtedly superficially attractive and has potential marketability to generation Y and beyond. However, it may be precisely the qualities that make it attractive to generation Y that represent the major barrier to its successful utilisation for virtual mooting. Second Life lays claim, to some, to ‘a sense of presence that lacks in other communication media. This characteristic is due to the 3D representation of avatars and objects, which contributes to the creation of a spatial dimension, in which users can move and communicate.’⁵³ It is questionable whether students are able to practise the real world skills fundamental to mooting by using avatars.

The Harvard Second Life trials are cited as an example of ‘complementarity’ between the real world and Second Life, with Roberta Savera noting that ‘the real world actually uses Second Life as a training tool for several activities, whose success provides positive effects in real life, while Second Life itself receives inputs from the real world, allowing real life knowledge to enter it.’⁵⁴ Such complementarity provides a robust educational experience, provided it is appropriately staged, and developed for appropriate purposes. Harvard’s initial use of Second Life provided a full immersive simulation experience, with the observation that ‘students’ first approach with judicial cases takes place in a realistic scenario, that enables them to practise what they have learned and move their first steps into a courtroom.’⁵⁵

50 See Roberta Savera, *Communications in an Immersive Digital Environment: Teaching and Learning in Second Life*, Creative Commons Attribuzione-Non commerciale-Non opere derivate 2.5 Italia, 70ff <www.imparafacile.it/progetti/second-life-tesi/tesi/Tesi-SL-Roberta_Savera.pdf> at 29 October 2009.

51 Ibid 67.

52 The unit description, in full, reads: ‘In this seminar we will do mock trials in Second Life. We will follow and further develop a format initially developed in my Evidence class. Students in the seminar will be the lawyers. Students will articulate core theory of each side of each case in opening and closing argument; will present and examine witnesses; will engage the strategic and entrepreneurial aspects of developing a workable, educationally useful, entertaining, and perhaps practical dispute resolution format in a new and exceedingly interesting medium. Witnesses and jurors will be drawn from Becca Nesson’s Extension School class in Virtual Worlds and from the at-large body of participants in Second Life. Students will write papers in conjunction with the seminar.’

53 Savera, above n 50, 13.

54 Ibid 70.

55 Ibid 71.

Notwithstanding the acknowledged capacity of Second Life to provide an entertaining and engaging educational experience, singularly appropriate in some parts of a law degree, the authors have some doubts as to the authenticity of the Second Life courtroom as a site for virtual mooting. Savera, for example, acknowledges that ‘teacher’s movement and gestures during a lesson, in both real and Second life, are important communication components. Through his movements a speaker can actually catch the attention of his public or, on the contrary, lose it.’⁵⁶ What is true of the teacher in the classroom is equally true of the participants in virtual mooting, both at the bar table and on the bench. Yet the use of nonverbal cues – particularly in a rhetorical/adversarial environment – is lost in Second Life; ‘avatars do not provide facial expressions or a rich body language’.⁵⁷

In other contexts, this loss of nonverbal clues may be compensated for by the claimed richness of interactive media and the positives of the immersive environment. In a virtual court, the comparatively crude gestures available to avatars in Second Life are a poor substitute for the subtleties of human faces and bodies, even when these have been diluted⁵⁸ by translation into video signals and two-dimensional representation on a computer monitor. Yet it is the reading of such subtleties which forms such a vital component of the mooting experience as authentic preparation for the real-life role of advocate.

B. Elluminate

In comparison with the visual excitement of Second Life, Elluminate presents as a relatively low-tech option, providing as it does an effective mechanism for synchronously managing remote audio and visual inputs from a range of asyntopic sites. Moderated through an administrator function, Elluminate allows for the presentation of specific and appropriate inputs to participants during the hearing of argument: judges in QUT’s e-Moot Court, for example, will be able to see remote student counsel on a wide-screen TV with the capacity for split screens. Such a system models closely the environment of the Technology Court in the Supreme Court of NSW, the use of which was in issue in *Idoport*.⁵⁹ Remote students will be able to see the judges – and, most importantly, the nonverbal cues by which counsel gauge the presentation of their argument. Elluminate also has minimal hardware, training and familiarisation costs:

- Hardware requirements are limited to a webcam, speakers and microphone, which are relatively low-cost, and if necessary can be provided by the university on loan to participating students. Many mid-range specified laptops, however, already contain these features. The provision of suitable hardware in the e-moot court can be achieved with minimal cost, and will integrate seamlessly with the current audiovisual systems in the court.
- Elluminate has the capacity to coordinate broadcast of audiovisual signals simultaneously, through a range of internet systems (such as dial-up and broadband connections) and across a range of platforms and operating systems⁶⁰ while maintaining synchronous delivery using a lower bandwidth.
- Training and familiarisation with an Elluminate-based virtual mooting is minimal, since the major burden falls on the person with the moderator role. Students who are familiar, for example, with *Skype* or similar VoIP technology, should adapt quickly to the requirements of Elluminate.

⁵⁶ Ibid 13.

⁵⁷ Ibid.

⁵⁸ The transmission of audio signals – either alone or as part of an audiovisual data stream – involves the filtering of the frequencies which are transmitted. This filtering generally excludes higher frequencies, and may involve the loss of some cues to the emotional state of the speaker which are carried in that frequency range: see De Wilde, above n 36, 316.

⁵⁹ [2000] NSWSC 338, [63] (Einstein J).

⁶⁰ That is, users are not tied to a single operating system.

C. Recommendation

In Semester 2, 2009, the authors are conducting trials of both Second Life and Elluminate as platforms for the delivery of virtual mooting, and QUT will also participate in the IVM using existing technology available in QUT's e-Moot Court. The authors will then evaluate the capacity of each of these modes of mooting to deliver a sound educational experience to students regardless of location, and to simulate real-world technology as a form of authentic learning. This will provide empirical evidence against which the apparent conceptual strengths and weaknesses of each platform can be evaluated.

V. CONCLUSION

This paper has demonstrated, through consideration of the literature as well as by analysis of student surveys, that students benefit from participating in mooting as well as using online resources. However, not all students have access to mooting. Therefore technology should be utilised to provide the opportunity to moot using videoconferencing, Second Life and Elluminate so that a comparison and evaluation can be made to determine which provides the best experience for students. This will then give students the opportunity to practice, which is a key to maximising the benefits of mooting.